



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Vicinay International Chain Company, Inc.--Request
for Reconsideration

File: B-222602.3

Date: August 5, 1986

DIGEST

Prior decision is affirmed on reconsideration where requester does not demonstrate that the decision was legally or factually incorrect.

DECISION

Vicinay International Chain Company, Inc. (Vicinay), requests that we reconsider our decision in Vicinay International Chain Co., Inc.--Request for Reconsideration, B-222602.2, June 16, 1986, 86-1 C.P.D. ¶ 555, in which we affirmed our dismissal of Vicinay's untimely protest, filed after publication of a Commerce Business Daily (CBD) notice of a noncompetitive industrial mobilization procurement. We held that denial of Vicinay's agency-level protest concerning the noncompetitive nature of the procurement, 1 month before the CBD notice, constituted notice of a proposed award such that Vicinay's protest should have been filed within 10 days of adverse agency action. Vicinay characterizes our decision as inconsistent with a statement by a member of GAO's Procurement Law Control Group, prior GAO precedent, and GAO's statutory responsibility under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551, et seq. (Supp. II 1984).

We affirm the prior decision.

Vicinay asserts that our dismissal of its protest as untimely is inconsistent with a statement made by a member of our Procurement Law Control Group during a telephone conversation that any protest filed before the Navy issued its solicitation would probably have been dismissed as premature. We need not address the content of the alleged telephone conversation, since we have long held that opinions expressed orally by employees of the General Accounting Office are not authorized, do not constitute official action, and cannot be recognized as controlling the action of the office on any matter that may come before it for official determination. PRC Information Sciences Co., 56 Comp. Gen. 769 (1977), 77-2 C.P.D. ¶ 11; 31 Comp. Gen. 613 (1952).

Vicinay also contends that our dismissal is inconsistent with GAO's policy "to resolve doubt surrounding the timeliness of a protest in favor of the protester" and cites Designware, Inc., B-221085, Jan. 28, 1986, 86-1 C.P.D. ¶ 101, and Benco Contract Services Co., B-218465.2, Jan. 15, 1986, 86-1 C.P.D. ¶ 40, as support for its contention. These cases are distinguishable from Vicinay's, however, since they involve situations where it was not clear from the record exactly what the agency communicated to the protester during conversations about its basis of protest. In contrast, the agency in Vicinay's case clearly denied Vicinay's protest in writing, stating that the procurement would be restricted. Though Vicinay argues that it was not certain whether the restriction was a domestic or sole-source restriction, such a distinction is immaterial where Vicinay did not qualify as a domestic source and only one domestic source existed for the procurement. Thus, the denial of Vicinay's agency-level protest was clearly adverse agency action as defined in our Bid Protest Regulations, 4 C.F.R. § 21.0(e) (1986).

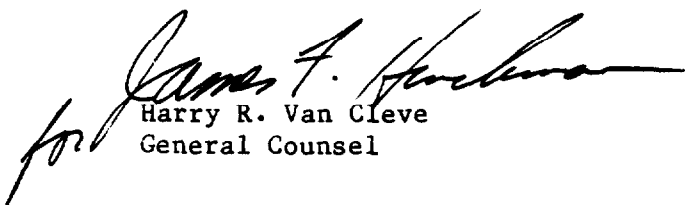
Vicinay also contends that our dismissal of its protest is inconsistent with CICA, arguing that under the statute it has the right to have its protest heard by GAO and that dismissal of its protest based on the application of a "housekeeping" regulation is inappropriate.

CICA authorized the Comptroller General to prescribe "such procedures as may be necessary to the expeditious decision of protests." 31 U.S.C. § 3555(a). Consistent with this statutory mandate, our Bid Protest Regulations establish an orderly process to insure equitable and prompt resolution of protests. See Tracor Applied Sciences--Reconsideration, B-218051.2, Apr. 12, 1985, 85-1 C.P.D. ¶ 422. Our strict timeliness requirements are necessary so that corrective action, if ultimately recommended, is most practicable and, thus, least burdensome on the conduct of the procurement. To waive our timeliness rules in Vicinay's favor would only serve to compromise the integrity of those rules. See Shaw Aero Development, Inc., B-221980, Apr. 11, 1986, 86-1 C.P.D. ¶ 357.

Finally, Vicinay reiterates arguments made in its original submission in support of its contention that it was not legally able to protest the procurement until notice of the proposed contract action appeared in the CBD. Mere disagreement with our prior decision, however, provides no basis for reversing the decision. TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 C.P.D. ¶ 389.

Vicinay has failed to show that our prior decision contains legal or factual errors that would warrant its reversal or modification.

Our prior decision is affirmed.


Harry R. Van Cleave
General Counsel